

Remarks

Claims 1-46 are pending. Claims 1 and 33 have been amended to recite "swelling agent present in amount of from about 10% to about 50% by weight." Support for the amended claims is found, for example, on page 17, lines 11-14 of the applicants' specification as filed. No new matter is introduced hereby.

Rejection Under 35 U.S.C. § 103 over Kuhrts and/or Chauhan et al.

As the advisory action (mailed April 23, 2003) states only that the request for reconsideration "does NOT place the application in condition for allowance because: The claimed range for the amount of swelling agent is considered obvious in the absence of a demonstration of criticality on the basis of MPEP 2144.05. A prima facie case of obviousness exists when the claimed ranges and prior art ranges do no overlap but are close enough that one skilled in the art would have expected them to have the same properties." (citing Titanium Metals), Applicants believe that other rejections under Section 112 have been overcome.

Claims 1 and 33 as amended call for swelling agent present in the amount of from about 10% to about 50% by weight. As noted previously by applicants, the prior art references Kuhrts and Chauhan et al. disclose the use of polyvinyl pyrrolidine (crosslinked) at 1.7% by weight, and Croscarmellose Sodium Type A at 2.4-2.8% by weight, respectively.

Neither of the cited references discloses the claimed range, as the office recognizes. Further, there is no suggestion or motivation to use a swelling agent in an amount of from about 10% to about 50% by weight, as required in the present invention.

Regarding the office's citation of Titanium Metals, applicants respectfully note that the prior art values for molybdenum (0.25% and 0.31%) and nickel (0.75% and 0.94%) were found to be "so close" to the claimed values, 0.3% and 0.8%, respectively, "that one skilled in the art would have expected them to have the same properties." Titanium Metals Corp. v. Banner, 227 USPQ 773, 783 (Fed. Cir. 1985). Applicants submit that such a close case is not presented here,


and a *prima facie* case of obviousness is not made out, particularly in view of the lack of suggestion to alter the values disclosed in the cited references.

Applicants submit that the claimed invention is not obvious over the cited art, and respectfully request consideration and withdrawal of the rejection on these grounds.

Conclusion

A Notice of Allowance is respectfully request as the next mailing from the Office. Authorization is hereby given to charge any fees deemed to be due in connection with this Response to Deposit Account No. 50-0912.

Respectfully submitted,
TALWAR et al.

By: 
George E. Heibel, Ph.D.
Reg. No. 42,648

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Ranbaxy Pharmaceuticals Inc.
600 College Road East, Suite 2100
Princeton, New Jersey 08540
Tel: (609) 720-5334
Fax: (609) 514-9779